

1 | **Supreme Court, U.S.**
FILED

05-568 SEP - 8 2005

No.

In The

SUPREME COURT OF THE UNITED STATES

ARSEN ABRAHAMYAN,

Petitioner,

-versus-

ALBERTO S. GONZALES,
Attorney General,

Respondent

**On Petition For A Writ of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

ARSEN ABRAHAMYAN

In pro se

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QUESTION PRESENTED

1. Whether the treasurer of a charity funded by the United Nations who is persecuted by government agents for whom he refused to embezzle was targeted "on account of political opinion" within the meaning of 8 U.S.C. §1101(a)(42)(A).

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TABLE OF AUTHORITIES

Federal Statutes

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Federal Regulations

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OPINION BELOW

The Ninth Circuit Court of Appeals did not elect to publish its memorandum opinion. It is therefore reproduced at App 1. The Order denying rehearing en banc is reproduced at App.3. The Board of Immigration Appeals dismissed the Petitioner's appeal without opinion.

JURISDICTION

The Ninth Circuit filed its decision on March 10, 2005, and entered an order denying a petition for rehearing on June 15, 2005. This Court has jurisdiction under 28 U.S.C. §1254(1) to review the circuit court's decision on a writ of certiorari. The Ninth Circuit had jurisdiction under 28 U.S.C. §1252. The Board of Immigration Appeals had jurisdiction under 8 C.F.R. §1003.1(b)(9). The Immigration Judge had jurisdiction under 8 C.F.R. §1003.14(b).

STATUTORY PROVISION INVOLVED

8 U.S.C. §1101(a)(42)(A)

The term "refugee" means:

(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person has habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership on a particular social group, or political opinion...

STATEMENT OF FACTS

Petitioner, Arsen Abrahamyan, is a native and citizen of Armenia, who entered the United States on or about February 8, 1999, as a nonimmigrant visitor authorized to remain in the United States until July 7, 1999. On or about August 31, 1999, the (then) Immigration & Naturalization Service ("INS")¹ issued a charging document alleging Abrahamyan's overstay. On October 25, 1999, Abrahamyan admitted its factual allegations and conceded removability, seeking relief through, *inter alia*, asylum. On May 22, 2000, the Immigration Judge denied all relief sought, finding that Abrahamyan's asylum claim did not arise under any of the five grounds enumerated by statute.

Abrahamyan cited a fear of persecution were he to return to Armenia. In support of his claim, he pointed to certain events that transpired prior to his departure to the United States.

Abrahamyan is well educated in economics and hails from a family involved in the purchase and sale of petroleum products used in aircraft. Subsequent to the breakup of the Soviet Union and the subsequent earthquake in Armenia, Abrahamyan's father urged him to volunteer his services to a children's charity group by the name of "Happy." In time, Abrahamyan would become the organization's treasurer and would control large sums of money collected from private donations and the United Nations. In February of 1998, Abrahamyan was approached by two revenue agents from

¹ On March 1, 2003, the INS ceased to exist as an agency within the Department of Justice and its functions were transferred to the Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, 110 Stat.2135 (Nov. 25, 2002).

the remnants of the KGB who mistakenly believed that Abrahamyan was embezzling from the charity and demanded to share in the loot. Abrahamyan refused to pay them thirty percent of the fund which resulted in a series of events that culminated in his fleeing Armenia.

In May of 1998, Abrahamyan was arrested and charged with a financial crime. While in custody, he was severely beaten both by hand and with a wooden yard stick although he suffered only soft tissue injuries. During his incarceration, his home was ransacked and his personal records stolen. Nevertheless, with the help of his assistant, Abrahamyan was able to reconstruct the records and prove his innocence to the court. The case was dismissed, angering the agents.

In July of 1998, Abrahamyan was again arrested, this time for his alleged involvement in a hit-and-run. The source of those allegations became apparent when he arrived at the police station to find the two revenue agents. That matter was disposed of by way of a \$3,000 bribe to the police.

In August of 1998, Abrahamyan was informed by the president of the charity that another government agency (that employed a cousin of one of the revenue agents) had instructed her to fire him from his position due to certain unspecified questionable activities. He sought two weeks in which to rectify the situation and went to visit the revenue agents. He offered twenty percent of the next (December) budget as the current monies had been spent. Having secretly recorded the conversation, Abrahamyan hoped that his possession of that tape would be enough to secure some peace of mind. It was not.

The day that the December funds were received, Abrahamyan's house was burgled. Items were stolen and broken. Although unable to prove it, in Abrahamyan's mind, the timing of the break-in pointed to the revenue agents. Two days later, an unidentified person attempted to strike Abrahamyan with a car. He thereafter fled to the United States.

In addition to his own testimony, Abrahamyan put on two witnesses. The first was a friend who had recently returned from a three-month visit to Armenia. While there, he took a car to be washed. At the car wash, he was approached by another customer who flashed a badge on his hip, indicating his association with Armenian law enforcement. That man indicated that he remembered the witness' friendship with Abrahamyan and in passing mentioned that if and when the authorities ever found Abrahamyan in Armenia, they would "take him out of his skin."

The second witness was Abrahamyan's mother who testified that the president of the charity had asked her to attend a visit by the authorities concerning her son. She did and overheard two agents indicate that her son would be arrested upon his return to Armenia or, for that matter, Russia.

The Immigration Judge found that, even accepting Abrahamyan's claim on its face, the facts would not support an asylum claim inasmuch as it did not arise under one of the five enumerated statutory grounds (race, religion, nationality, political opinion, or membership in a particular social group).

REASON FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THIS PETITION IN ORDER TO SETTLE AN ISSUE APPARENTLY NEVER RESOLVED BY PUBLISHED OPINION BY ANY COURT.

The Court should grant this petition in order to address circumstances that appear to have evaded review in any published opinion. In particular, the Court should seize the opportunity to weigh in on the issue of imputed political opinion in the context of persons situated as is the Petitioner, *i.e.*, untenably pitted between corrupt agents of his own government and the expectations of the United Nations.

CONCLUSION

The Court should grant the petition for a writ of *certiorari* and reverse the decision of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,
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App. I

NOT FOR PUBLICATION

FILED: JUN 15, 2005

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARSEN ABRAHAMYAN, No. 03-71980

Petitioner,

Agency No. A75-654-174

v.

MEMORANDUM*

ALBERTO GONZALES**,
Attorney General,

Respondent.

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2005***
Pasadena, California

Before: T.G. NELSON, SILVERMAN, and TALLMAN,
Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Alberto Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed.R.App.P. 43(c)(2).

*** This panel unanimously finds this case suitable for decision without oral argument. See, Fed.R.App.P. 34(a)(2).

App.2

Arsen Abrahamyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") summary affirmance of an immigration judge's ("IJ") denial of his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. §1252. Where the BIA affirms an IJ's order without opinion, we review the IJ's order as the final agency action. *Kebede v. Ashcroft*, 366 F.3d 808, 809 (9th Cir. 2004). We review for substantial evidence the factual findings underlying the IJ's eligibility determinations. *Gormley v. Ashcroft*, 364 F.3d 1172, 1176 (9th Cir. 2004).

Substantial evidence supports the IJ's determination that Abrahamyan did not demonstrate eligibility for asylum because he did not show mistreatment on account of any enumerated ground. *See Zayas-Marini v. INS*, 785 F.2d 801, 806 (9th Cir. 1986).

By failing to qualify for asylum, Abrahamyan necessarily fails to satisfy the more stringent standard for withholding of removal. *See Fisher v. INS*, 79 F.3d 855, 961 (9th Cir. 1996)(en banc). Substantial evidence also supports the determination that Abrahamyan is not entitled to CAT relief because he did not demonstrate that it is more likely than not that he would be tortured if returned to Armenia. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

Abrahamyan's contentions regarding the BIA's decision to streamline this case are foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850-51 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.

App.3

FILED: JUN 15, 2005

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARSEN ABRAHAMYAN, No. 03-71980

Petitioner,

Agency No. A75-654-174

v.

ORDER

ALBERTO GONZALES*,
Attorney General,

Respondent.

Before: T.G. NELSON, SILVERMAN, and TALLMAN,
Circuit Judges

The panel has voted to deny the petition for rehearing
in banc.

The full court has been advised of the petition for
rehearing en banc and no judge has requested a vote on
whether to rehear the matter en banc. Fed.R.App.P. 35.

The petition for rehearing en banc is denied.

* Alberto Gonzales is substituted for his predecessor, John
Ashcroft, as Attorney General of the United States, pursuant
to Fed.R.App.P. 43(c)(2).